IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.450 OF 2005

M/s.Artson Engineering Ltd and ors. Applicants.
Vs
Shri Sudhakar Gopal Deshmukh & anr. Respondents.

Mr S.V.Kotwal with Mr. M.S.Mohite, for the applicants.
Mr R.Y.Mirza, APP for the respondent-State.
Mr Dundapa B Patil, for respondent no.1.

WITH

CRIMINAL REVISION APPLICATION NO.451 OF 2005

M/s.Artson Engineering Ltd and ors. Applicants.
Vs
Shri Sudhakar Gopal Deshmukh & anr. Respondents.

Mr S.V.Kotwal with Mr. M.S.Mohite, for the applicants.
Ms Rajeshree M Gadhavi, APP for the respondent-State.
Mr Dundapa B Patil, for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 6th JUNE, 2006
P.C.:

1. Rule. Returnable forthwith. The respondents waive service. By consent, rule is heard forthwith.

2. These two criminal revision applications filed by the applicants-accused are against the judgment and order dated 3.10.2005 passed in two criminal revision application nos 120/2004 and 121/2004. By those revision applications the respondent-complainant had challenged the order dated 2.9.2004 passed by the learned Magistrate on the complaint filed by the

respondents under section 138 of the Negotiable Instruments Act. That order reads thus:-

> "Accused present. Their advocate present too. Complainant and his Adv. absent when called out till 4.35 p.m. No application by complainant for adjournment. As per Roznama complainant is absent since long. Hence, complaint stands dismissed for want of prosecution. Accused are discharged. Their bail bond stands cancelled."

Admittedly, that order was passed under section 256 of the Code of Criminal Procedure and, therefore, even the accused are discharged the order of discharge is in the nature of acquittal. That being so, the only remedy available in law was to file an appeal and not a revision. The revision against aforesaid order was not tenable. This position in law has not been disputed by the learned counsel for the respondent-complainant. The learned counsel appearing for the parties have, therefore, agreed for the following order:

(i) The impugned order dated 3.10.2005 is quashed and set aside.

(ii) Liberty to the respondent-complainant to file an appeal against the aforesaid order dated 2.9.2004. If

such an appeal is filed by the respondent-complainant within two weeks from today, same may be considered on merits without entering into an issue of limitation.

(iii) These revision applications are disposed of in the aforesaid terms.

(D.B.BHOSALE,J.)